IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10755 of 1993

with

SPECIAL CIVIL APPLICATION No 13783 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - : NO

2. To be referred to the Reporter or not? - :

3. Whether Their Lordships wish to see the fair copy of the judgement? - : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - : NO

5. Whether it is to be circulated to the Civil Judge? - : NO

LOTUS HOTELS PVT.LTD.

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

1. Special Civil Application No. 10755 of 1993

MR NK MAJMUDAR for Petitioners

MR AMAR BHATT FOR MR SN SOPARKAR for Respondent No. 1

DELETED for Respondent No. 2

MR HM PARIKH for Respondent No. 3

2. Special Civil ApplicationNo 13783 of 1993

MR BM MANGUKIYA for Petitioners

MR RM DESAI for Respondent No. 1

MR AMAR BHATT FOR SN SOPARKAR for Respondent No. 2

MR HM PARIKH for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH
Date of decision:-28/03/2000

ORAL JUDGEMENT

1. In both these cognate petitions the parties as well as the issues involved are same and the hence both these petitions are being disposed of by this common judgment.

2. Spl.C.A. No. 10755/93 has been filed for quashing and setting aside the impugned action of the respondent no.1 GSFC in arbitrarily sealing the premises of the petitioner no. 1 Company illegally, without authority of law and violative of principles of natural justice and for restraining the respondent no. 1 GSFC from proceeding further under Section 29 of the State Financial Corporation Act, 1951, for quashing and setting public notice issued by the respondent no. 2, appearing in Gujarat Samachar in its daily edition published from Baroda on November 21, 1995, for quashing and setting aside a transaction in nature of sale and/or analogous thereto of selling the property of the petitioner no. 1 Company situated at Baroda bearing Survey No. 512/2/1 with constructions standing thereon for Rs.2,77,77,777/to M/s. Jailaxmi Construction Company of Anand and any consequent transaction thereof, entered into between GSFC and M/s. Jailaxmi Construction Company, Anand and/or M/s. Jailaxmi Construction Company and in respect of other persons; and for directing the respondent no. 1 to release the sealed premises of the petitioners forthwith.

3. While Spl. C.A. No. 13783/93 has been filed for a direction to the respondent no.1 Bank of Baroda to release the entire sanctioned amount of Rs.26 lacs to the petitioner no.1 without any further delay and for further direction to the respondent no. 1 Bank of Baroda to sanction additional term loan of Rs. 68 lacs without insisting upon the petitioner no. 1 bringing in any interest free funds upfront either on his own or through his relatives, friends and associates; for further direction to the GSFC to forthwith furnish an unconditional and irrevocable guarantee to the Respondent no. 1, in favour of the petitioners, in respect of the Respondent no. 1's obligation to release Rs. 26 lacs forthwith to the petitioner no. 2 in the first instance and considering this release an additional term loan of Rs.68 lacs to the petitioners; for quashing and setting aside the public notice issued by the respondent no. 3

appearing in Gujarat Samachar in its daily edition published from Baroda on November 21, 1995 and for quashing and setting aside a transaction in nature of sale and/or analogous thereto of selling the property of the petitioner no. 1 Company situated at Baroda bearing Survey No. 512/2/1 with constructions standing thereon to the rate of Rs. 2,77,77,777/- to M/s. Jailaxmi Construction Company of Anand and any consequent transaction thereof, entered into between GSFC and M/s. Jailaxmi Construction Company and/or M/s. Jailaxmi Construction Company.

4. The petitioners made a project for constructing Lotus Hotel Pvt. Ltd. and for that purpose the petitioners applied for the loan of Rs. 45.16 lacs by an application dated 7-12-1977 to Gujarat State Financial Corporation (hereinafter referred to as "GSFC"). The application for Rs.29.93 lacs was allowed and granted on 24-7-1978 and the loan was sanctioned. The petitioners as well as respondent Corporation entered into the agreement on 1-2-1979. There was a condition in the said agreement that the petitioners will invest his own amount of Rs.20 lacs in the project first of all and then the respondent Corporation will disburse the amount of loan to the petitioners. At the relevant time the petitioners have not invested the aforesaid amount from his own source as agreed in the aforesaid agreement. Hence, the respondent Corporation did not disburse the loan amount to the petitioners. Therefore, the petitioner filed Spl.C.A. No. 1399/79 for a direction to the respondent Corporation to disburse the amount of loan as already sanctioned by the respondent Corporation. On 2-2-1981 the petition was allowed and the respondent Corporation was directed to disburse the entire amount of loan forthwith. The respondent Corporation filed L.P.A. No. 79/81 against the order dated 2-2-1981 of learned single Judge. L.P.A. No. 79/81 was dismissed and the findings of the learned Single Judge were confirmed by the order dated 12-10-1981/25-1-1982. Against that order, the Corporation filed S.L.P. No. 1099/82 before the Supreme Court and the said S.L.P. No. 1099/82 was dismissed on 3-5-1983. Before dismissal of the said S.L.P. by the Supreme Court, the respondent Corporation started to disburse the amount of Rs.29.93 lacs to the petitioners from 12-3-1981 to 11-4-1984. Amount of Rs. 4 lacs was given in the first instance to the petitions by the respondent Corporation on 12-3-1981. Second instalment of Rs. 3 lacs was disbursed on 1-6-1982. Third instalment of Rs.3 lacs was disbursed on 20-1-1983. Thereafter, fourth instalment of Rs.1.53 lacs was disbursed on 2-2-1983 and fifth instalment of Rs.5.47

lacs was disbursed on 10-2-1983. Sixth instalment of Rs. 10,000/- was disbursed on 19-4-1983. The next instalment of Rs.5.47 was paid on 10-8-1983 and last instalment of Rs.8.51 lac was disbursed on 11-4-1984. Thus, the entire amount of loan was paid to the petitioners between 12-3-1981 to 11-4-1984. According to the condition of the agreement dated 1-2-1979 the instalment of repayment was required to be started from 2 years from the date of first instalment and it is stated that no payment was made by the petitioners as per the terms and conditions of the agreement dated 1-2-1979. The petitioners filed Spl. Civil Suit No. 353/84 for damages of Rs.105 lacs in the District Court at Baroda.

5. Meanwhile, S.L.P. No. 1099/82 was decided by the Supreme Court and the application being Civil Application No. 3327/84 in the said S.L.P. No. 1099/82 was filed wherein the petitioners was directed to withdraw the suit and further proceedings of the suit were stayed by the order dated 4-4-1984 of the Supreme Court. Pursuant to the order dated 4-4-1984 of the Supreme Court the petitioner withdrew Spl. Civil Suit No. 353/84. The Supreme Court disposed of Civil Application No. 3327/84 with certain directions and observations directing the respondent Corporation to grant further amount of Rs.15 lacs to the petitioner on such terms and conditions of the agreement to be arrived at between the parties, on 2-5-1984. The respondent Corporation sent letter dated to the petitioner dated 30-1-1985 offering additional loan on the condition that additional amount of loan is required to be secured by the property of the petitioner no. 2 and/or the property of his relatives, promoters or associates. But that condition was not complied with by the petitioners and hence the additional amount of loan could not be disbursed to the petitioners. The respondent Corporation issued the notice to the petitioners u/s 29 of the Gujarat State Financial Corporation Act, 1951 (hereinafter referred to as the Act) on 1-3-1993 for recovery of amount of Rs.1,23,86,481/- as on 31-12-1992 failing which auction u/s 29 of the Act for sale of the property will be held. The petitioners sent reply by the letter dated 2-4-1993. The respondent Corporation issued fresh notice dated 9-9-1993 to the petitioner for recovery of amount of Rs.1,71,58,115/- as on 9-9-1993 u/s 29 of the Act and the petitioner was required to give personal hearing on the date fixed i.e. 30-9-1993. It is alleged that the petitioner did not turn up and hence the respondent Corporation took decision on 5-10-1993 for taking possession of the unit. On 11-10-1993 the respondent Corporation took over the possession of the

unit of the petitioner. The petitioner filed caveat application on 12-10-1993. The petitioners preferred Spl. C.A. No.10755/93 and he obtained ex-parte ad-interim injunction on 23-12-1993. No interim order was passed by this Court thereafter. The petitioners submitted another proposal within 10 days regarding payment of the outstanding dues and the parties were directed to meet on 5-1-1994 and the meeting of the petitioners and officers of the respondent Corporation was held on 24-1-1994. But the matter in dispute could not be materialized. The learned Signle Judge admitted Spl. C.A. No. 10755/93 and granted interim relief and to continue the interim relief for certain period. The respondent Corporation filed L.P.A. No. 206/94 on 28-4-1994 before this Court against continuation of ad-interim relief and the Division Bench of this Court passed the order on 4-5-1994 in L.P.A. No. 206/94 staying the operation of the interim order dated 24-4-1994 of the learned Single Judge. However, the respondent Corporation was given liberty to take action u/s 29 of the Act for recovery of the amount of loan against the petitioner. The Division Bench in L.P.A. No. 206/94 confirmed the interim order dated 4-5-1994 by the order dated 6-5-1994. The petitioners filed S.L.P. No. 9416/94 against the order of the Division Bench on 6-5-1994 before the Supreme Court on 18-5-1994. The aforesaid S.L.P. No. 9416/94 was dismissed as withdrawn on 23-5-1994. The Corporation invited public offer for sale in the advertisement. The offer of one Liberty Construction Pvt. Ltd. was accepted by the respondent Corporation on 30-5-1994 though that offer could not be materialized. Subsequently, the petitioners filed Spl. C.A. No. 7524/94 challenging the advertisement of sale of the property on 1-6-1994 and Spl..A. No. 7524/94 was admitted on 24-6-1994 and the interim relief was refused in July, 1994. The petitioners filed L.P.A. No. 276/94 against refusal of interim order passed by this Court though L.P.A. No. 276/94 was dismissed by the Division Bench of this Court on 13-7-1994. The petitioners preferred S.L.P. 1224/94 against the order dated 13-7-1994 passed by the Division Bench of this Court. S.L.P. No. 1243/94 was dismissed as withdrawn on 16-8-1994 by the Supreme Court on the statement of the petitioner that they will file fresh petition before this Court. The petitioner also filed contempt proceedings under the provisions of the Contempt of Courts Act, 1971 being Civil Application No. 253/94 before the Supreme Court on 7-9-1994. That contempt petition was dismissed by the Supreme Court on 8-5-1995. The property was sold to the respondent no. 2 M/s Jaylaxmi Land Developers, Anand on 18-11-1995 and 13-12-1995 for Rs.2,77,77,777/-.

The petitioner was given an opportunity to give highest bid in the auction sale by this Court vide order dated 13-7-1994.

6. The petitioners have not filed any petition as they made a statement before the Supreme Court dated 16-8-1994. But they moved amendment application for amending both the petitions and the amendment application was allowed and accordingly both the petitions were amended by the order dated 19-2-1996 and 28-2-1996.

7. The petitioner no. 2 appeared in person in the present petitions and he was given reasonable opportunity of hearing. Mr. Amar Bhatt for Mr. Soparkar appeared on behalf of the respondents no. 1 and 2 and heard learned counsel Mr. N.K. Majmudar for the petitioner at length.

8. This Court vide order dated 24-4-1994 passed the fresh common order in both the petitions and admitted both the petitions only for settlement between the parties and not on merit of the case with the observation that the learned Single Judge was of the opinion that it may be difficult for the petitioner to establish any right or rights as asserted in the petition with a view to justify the prayers made therein and he was inclined to take a slightly optimistic view in the mater with limited objective of granting some additional thinking time to the parties and particularly the petitioner, in the hope that commercial wisdom will prevail over mere aggressive assertion of so-called legal rights. He was inclined to admit the petitions because not necessarily he was satisfied that the petitioner has made a prima facie case, but only because he was conscious that the summary rejection at this stage although justified would irrevocably terminate the business relations between the parties. He also considered the possibility that the intervention of the Court and directed to be placed on the final hearing board in the third week of June, 1994.

9. Interim relief in Spl.C.A. No. 10755/93 was refused. However, it was clarified that ad-interim relief granted in the said petition shall continue to operate till 24-6-1994 and in case this petition is not heard by the said date, the respondent Corporation was given liberty to move for a modification said interim relief.

10. Petitioner no. 2 in the present petition contended that he was involved in a criminal proceedings in conspiracy at the instance of the respondents and

hence he is entitled to damages of Rs.99 lacs in different cases.

11. In support of that contention, the party in person relied on the decision of the Supreme Court in the case of Smt. Kumari Vs. State of Tamil Nadu & Ors., reported in JT 1992 (2) SC 16, wherein it has been held that Appellant's child fell down into a ten feet deep uncovered sewerage tank. The petitioner sought compensation of Rs.50,000/- from respondents. The High Court dismissed the writ petition on the ground that in writ jurisdiction it is not possible to determine as to which of the respondents was negligent. Order of the High Court was set aside by the Apex Court and the State of Tamil Nadu was directed to pay a sum of Rs.50,000/with 12% interest to the appellant.

12. In this respect, the prayers made in the petitions were seen. But no prayer has been made regarding damages or compensation as requested by him in this Court. As such, it is not possible to consider the amount of compensation as claimed by the petitioner no. 2.

13. Learned counsel for the respondent no. 1 contended that the petitions have not been admitted on merits of the case and they were admitted only to give an opportunity of hearing to the parties particularly the petitioners to settle the matter. While on the other hand, learned counsel Mr. Majmudar for the petitioner contended that the contentions taken by the petitioner in the aforesaid petitions were kept open and the learned Single Judge had observed that controversial point cannot be decided at admission stage. Meaning thereby all the contentions taken by the petitioner in the aforesaid petitions can be very well decided at final hearing stage. Learned Single Judge has not closed the doors of submissions and/or contentions of the petitioners.

14. In this regard, in the order dated 24-4-1994 it is observed that it may be difficult for the petitioners to establish any right or rights as asserted in the petitions with a view to justify the prayers made therein and because not necessarily he was satisfied that the petitioner has made a prima facie case, but only because he was conscious that the summary rejection at this stage although justified would irrevocably terminate the business relations between the parties and he was persuaded that the intervention of the Court may bring a practical solution. Meaning thereby, the petitions were admitted not on merits of the case but to give an

opportunity of hearing to the parties on the aspect to settle the matter. Thus, the contention of the petitioner that the petitions were admitted on merits is not sustainable.

15. Learned counsel for the respondent Bank submitted that none of the action of the respondent Bank has been challenged. Hence, the petition is not tenable at all. In the petition unreasonable prayer has been made which is not sustainable in the eye of law as the petitioner has prayed for a direction to the respondent Bank of Baroda to release the entire sanctioned amount of loan of Rs.26 lacs to the petitioner without any further pending its consideration of the petitioner's loan application for grant of additional term loan of Rs.68 lakhs, without insisting on the petitioner no. 1 bringing in any interest free funds upfront either on his own or through his relatives, friends and association and also for direction to the respondent no. 2 Corporation to furnish an unconditional and irrevocable guarantee to the respondent no. 1 in respect of the respondent no. 1's obligation to release Rs.26 lakhs to the petitioner no. 2 in the first instance and in respect of the respondent no. 1 obligation to sanction and release an additional term loan of Rs.68 lacs to the petitioners. The petitioner has further prayed for that respondent without the consideration of petitioner's additional term loan of Rs.68 lacs and also for directions to the respondent no. 1 Bank of Baroda to accept unconditional and irrevocable guarantee from the respondent no. 2 consideration of its release of 26 lacs to the petitioner no. 2 in the first instance and in consideration of its sanction and release of additional term loan of Rs.68 lacs and further sought for quashing the notice issued by the respondent no. 3 appearing in Gujarat Samachar in its daily edition published from Baroda on November 21, 1995 and for quashing and setting aside a transaction in the nature of sale and/or analogous thereto of selling the property of the petitioner no. 1. Meaning there is that loan of Rs.26 lacs be issued without insisting any guarantee or independent charge as security of the loan amount of Rs.26 lacs sanctioned. Learned counsel for the respondent Bank makes a statement that if the petitioner furnishes independent and separate charge for security of the amount of loan of Rs.26 lacs sanctioned, the respondent Bank of Baroda is still ready to pay Rs.26 lacs under the Rule, Regulations and guide lines issued by the Reserve Bank of India. The respondent Bank cannot grant or disburse amount of loan without getting security by independent charge pursuant to the said terms and conditions already issued by the Reserve Bank of India.

16. In view of the facts and circumstances of the case, Spl. C.A. No. 13783/93 is not entertainable on the ground that the unusual prayer is made that amount of loan sanctioned be disbursed without insisting any independent charge for security of the loan amount.

17. So far as Spl. C.A. No. 10755/93 is concerned, first prayer is to declare the impugned action of the respondent no. 1 GSFC in arbitrarily sealing the premises of the petitioner no. 1 Company on 17-10-1993 as illegal, without authority of law and violative of principles of natural justice and for quashing and setting aside the impugned order aforesaid. This prayer is infructuous in view of the fact that after sealing and taking into possession by the respondent Corporation, the property has already been sold to M/s. Jailaxmi Land Developers as the respondent Corporation was permitted to take action u/s 29 of the Act by the Division Bench of this Court in L.P.A. No.206/99 and Special Leave Petition was filed against that order before the Supreme Court and subsequently the said S.L.P. was withdrawn by the petitioner himself. As such, the action of the respondent Corporation in taking legal action u/s 29 of the Act for recovery of loan amount and placing the unit for sale in public auction can not be said to be illegal or unjustified in law and that action has already been over and completed. As such, this prayer is not entertainable at this stage.

18. As far as second prayer of Spl.C.A. No.10755/93 for quashing and setting aside the pubic notice issued by the respondent Corporation in Gujarat Samachar from Baroda on 21-11-1995 is concerned, the property in question has already been sold by the respondent no. 2 pursuant to the public not ice issued by the respondent Corporation in Gujarat Samachar on 21-11-1995 for Rs.2,77,77,777/- to M/s. Jai Laxmi Land Developers, Anand as the Corporation was permitted by the Division Bench of this Court to take action against u/s 29 of the Act. As such, it would not be possible to quash and set aside the sale proceedings in pursuance of the public notice dated 21-11-1995.

19. Though none of the prayers can be allowed even then the learned counsel for the petitioner was permitted to argue and he has contended that in the proceedings u/s 29 of the Act the actions taken by the respondent Corporation are illegal and are not sustainable in the eye of law in view of the fact that processing clause regarding interest to be charged at the rate of 24% is

against the terms and conditions of the agreement as well as sanction letter. The petitioner was required to be given personal hearing by the respondent Corporation on 15-3-1993 before initiating proceedings under Section 29 of the Act. No personal hearing was given because on 15-3-1993 the concerned officer of the respondent Corporation fell sick as he received heart attack. Since he was sick, no personal hearing was given to the petitioner on 15-3-1993 and further proceedings of sealing the property on 11-3-1993 by the respondent Corporation are illegal and not sustainable in the eye of law. This fact is a disputed fact inasmuch as the respondent Corporation has stated in the affidavit-in-reply that the petitioner did not turn up on the date fixed for hearing. The petitioner was given an opportunity of hearing but he did not avail of it. This fact being disputed fact cannot be examined at this stage because each of the party is stating different facts regarding personal hearing. As such, this Court is unable to take cognisance of the fact that the petitioner had gone on 15-3-1993 but the petitioner was not given any opportunity of hearing to represent his case since the representative of the respondent Corporation was sick and hospitalized due to heart attack. The petitioner raised objection that the respondent Corporation should not charge interest exceeding 13%. The respondent Corporation cannot also charge penal interest or compound interest. The petitioner has filed chart and other papers along with petitions which show that interest at the rate of 24% can be charge and according to the terms and conditions No. 4A rate of interest can be changed when rate of interest is changed by the Reserve Bank of India. According to Corporation rate of interest has been changed by the Reserve Bank of India. As it is a disputed question whether Reserve Bank of India has issued any Circular in respect of charging interest at the rate of 24%. This Court can not take cognizance of the fact. It is also argued that the petitioner applied for loan of Rs.51 lacs from Bank of Baroda. But Bank of Baroda sanctioned loan for Rs.25 lacs. But Bank of Baroda committed mistake on the assumption that the petitioner wanted only Rs.25 lacs. Ultimately, Bank of Baroda sanctioned and increased loan from Rs. 25 lacs to 61 lacs. The respondent Corporation had given Peri Passu charge in respect of loan of Rs. 25 lacs sanctioned by Bank of Baroda. But in respect of remaining loan of Rs. 26 lacs, the respondent Corporation refused to Peri Passu charge in favour of Bank of Baroda and the amount was not paid or disbursed to the petitioner due to the fact that the respondent Corporation has not issued Peri Passu in favour of Bank of Baroda. In this respect, Bank of

Baroda stated that Bank wanted additional charge. But the additional and independent charge was not given by the petitioner. Hence, the amount could not be paid or disbursed to the petitioner. Bank of Baroda has stated that Bank of Baroda is still ready to pay remaining amount of loan of Rs.26 lacs to the petitioner if he is ready to give independent additional charge security amount of loan from the property of the petitioner himself or his relatives or associates. In absence of that independent additional charge , the petitioner could not be given a loan for further amount of Rs.26 lacs.

20. The petitioner no. 2 appeared in person and stated that he has no personal capital to secure the amount of loan which is to be disbursed by respondent Bank of Baroda. As such, he is unable to give independent security for this amount for which the respondent Bank of Baroda is ready to advance the same.

21. The petitioners were given ample opportunity to make settlement with the respondent Corporation and the respondent Bank of Baroda for business transaction by this Court. But the petitioners could not be able to make settlement with the respondent Corporation or the respondent Bank of Baroda for which this Court admitted these petitions. The petitioner has taken loan of Rs.29.93 lacs from the respondent Corporation and Rs. 25 lacs from the respondent Bank of Baroda. However, he has not paid a single pai towards due loan amount to the respondent Corporation and respondent Bank of Baroda till today.

22. I do not find any good reason to exercise extra ordinary jurisdiction u/Article 226 of the Constitution of India. Thus, both these petitions are liable to be dismissed. Accordingly, both these petitions are dismissed. Rule is discharged with no order as to costs and interim relief, if any, is discharged, in both these petitions.

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/JVSatwara/